IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Civil Misc. Writ Petition no. 5266 of 2001 (M/S)
(Old No. 21010/1987)

Vijay Uniyal

.....Petitioner

Versus

1. District Judge,
   Dehradun

2. Rent Control and Eviction Officer
   Mussoorie

3. Smt. Sarita Devi
   W/o late Som Dutt
   R/o Nand villa
   Mussoorie (Dehradun)

.....Respondents

Mr. B.P. Nautiyal, learned counsel for the petitioner.
None appeared for the respondents.

Hon'ble Prafulla C. Pant, J.

By means of this writ petition moved under Article 226 of the Constitution of India, the petitioner has challenged the judgment and order dated 13.11.1987 and 20.05.1987, passed by Shri J.C. Gupta, the then learned District Judge, Dehradun, whereby he has set aside the order dated 06.11.1986 of the Rent Control and Eviction Officer.

2) Brief facts of the case as narrated in the writ petition are that there is a building known as "Savitri Villa Cottage' in Mussoorie. On 03.05.1984, petitioner made an application for allotment of said premises under U.P. Act

XIII of 1972. The said premises were alleged to be in illegal possession of respondent no. 3. The question of vacancy was considered by the Rent Control and Eviction Officer and after obtaining the report of the Rent Control Inspector, he declared the vacancy and allotted the premises to the petitioner. The petitioner in pursuance of the allotment order, got the possession of the premises in question. The occupant (respondent no.3) challenged the notice in form-D, before the District Judge, Dehradun by filing a revision. The revision was allowed on the technical ground that due notice was not given to the respondent no. 3.

3. Notices were issued to the respondents but no one turned up at the time of final hearing to contest the petition though the counter affidavit was filed. As such heard learned counsel for the petitioner.

4. Learned counsel for the petitioner submitted that the order of allotment, which was also challenged by the respondent no. 3 by filing another revision, which was dismissed and there after the allotment order stood confirmed. And the writ petition no. 19903 of 1986, filed by respondent no. 3, was also dismissed on 17.11.2004. As such since the allotment order has already been confirmed, it cannot be said to be the case of substantial injustice as to the possession, which is admittedly given to the petitioner. From the record it appears that the possession of the respondent no. 3 was found to be illegal as such the impugned order dated 20.05.1987 and 13.11.1987 cannot be upheld as the same are based on technicalties and no the substantial justice has

been done by reversing the order of Rent Control and Eviction Officer. The rules of procedure are meant for fulfilling the object of the Act and the requirements of notice in form- C or D are made only for the purpose of executing the order passed under the Act. By technical non-compliance of the rules no substantial injustice is found done to the respondent no. 3. The order passed under the Act should not have been set aside only on the ground of technical procedural defects. Therefore, impugned orders are liable to be set aside.

5. In view of the circumstances and the discussions as above, the writ petition is allowed. Both the impugned orders dated 20.05.1987 and 13.11.1987 are quashed. No order as to costs.

(Prafulla C. Pant, J.)

Dt: December 20, 2004
Sweta